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Attorneys for Defendants
Woodbine Alaska Fish Company,
and Guy Ferrari Inc.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

CITICAPITAL COMMERCIAL CORP,
Plaintiff,
v.

Case No. A-04-0147 CI
IN ADMIRALTY

EGEGIK SPIRIT, official number 2999957,
her equipment, gear, furniture, apparel,
fixtures, tackle, boats, machinery, anchors
and all appurtenances, in rem;

NAKNEK SPIRIT, official number 585824,
her equipment, gear, furniture, apparel,
fixtures, tackle, boats, machinery, anchors
and all appurtenances, in rem;

WOODBINE ALASKA FISH CO.,
in personam; and GUY FERRARI, INC,
in personam.

DEFENDANTS AND CROSS-COMPLAINANTS OBJECTIONS TO PLAINTIFF'S NOTICE OF INTENT TO FILE OBJECTIONS

Defendants,

**BIRNBERG &
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1 Now come Defendants Woodbine Alaska Fish Company for itself, and on
 2 behalf of its vessel, the Egegik Spirit, and object to Plaintiff's Notice of Intent to
 3 File Objections.

4 The only time period proscribed by Local Rule 12(C) for filing of
 5 objections and responses is after (1) the initial recommendations; (2) before the
 6 matter is transferred; and (3) as provided by the magistrate. It is therefore
 7 procedurally incorrect for Plaintiff to object to the final recommendation after it has
 8 been referred back to the judge, when the specific orders of the magistrate provided
 9 otherwise. This matter was referred to the Judge and was no longer appropriate for
 10 objection. This Court has already generously extended the amount of time provided
 11 by Local Rule 12(C) for responses to objections, allowing eight days, to February
 12 23, 2006.

13 The deadline for filing any objections to the initial magistrate recommendations was
 14 February 15, 2006. Plaintiff filed none. The recommendation extended further time to file
 15 any response to an objection until the 23rd of February (additional time from the five days
 16 for a total of eight days, or three more days). Plaintiff argues that it knowingly deleted the
 17 objections, but is silent on why he did not go to the "recycle bin" to retrieve it or check the
 18 court's docket. Given this highly contested case, it would seem naïve to not expect that
 19 something must be filed on the 23rd, the last day for a response.

20 Plaintiff agreed in its contract with the court to be bound by e-filing notice (Rule
 21 5.3(2)(B)). This is just another delay in the entire process, of which the docket reflects over
 22 ten requests for continuances (including requests of counsel to stipulate) by the Plaintiff
 23 itself. Further, no objections were filed, but only a "Notice of Intent" to file an objection.
 24 There is no basis or pleading form to file a notice that you intend to object. This "notice"

1 does not toll the time period in which to file objections and has no force in law. Objections
2 were due by February 15 and a response due by February 23, 2006. No notices of intent to
3 do something make the deadline extended.

4 Counsel for Plaintiff is effectively moving for an extension of time to file a
5 response Defendants' objections, but unlike the ten other requests for extensions of
6 time from the Court and opposing counsel, counsel this time decided to grant it
7 himself through his unique interpretation of Rule 12(C), rather than file a FRCP
8 60(b) motion.

10 Counsel's argument that he is inexperienced with efilng is untenable
11 because if that were the case, he would not have relied on it, and would have
12 calendared the deadlines and checked the dockets as prudent litigators do, whether
13 the case is an efilng case or not. Furthermore, deleted email messages remain in the
14 trash folder until emptied, and can be undeleted. Not only did counsel failed to
15 check the Court's docket, but he failed to contact opposing counsel to verify that
16 they had not filed anything, failed to contact the court to verify the same, and failed
17 to review his deleted messages. Counsel's neglect is inexcusable.

19 The subject motion for summary judgment was filed on **May 26, 2005**.
20 Defendants object to further undue delay by Plaintiff's tardy pleadings, and request
21 for oral argument after it has already been denied by this Court, and respectfully
22 requests that this Court maintain its Final Recommendations and refer the matter
23 back to the Judge, save and except the clerical correction as to the sale amount of
24 the vessel. Plaintiff's request for oral argument after its initial request was denied is
25 also flagrant, as the court has determined oral argument is not necessary based upon
26 the submissions for summary judgment. Of note, is that Plaintiff's counsel knew that
27
28

1 the sale of the Egegik Spirit was for \$126,000 was missing from the court's
 2 recommendation and Defendant should receive credit, but has said nothing on that
 3 matter. Further, the court should be aware that this office complained and filed a
 4 motion that it was not receiving notice of motions timely filed by the plaintiff's
 5 counsel, having matters decided before we received notice of the numerous ex parte
 6 applications that Plaintiff filed. This office requested fax service. Plaintiff objected,
 7 and said it was too much office work to place motions or letters into a fax (instead
 8 of an envelope). This Court agreed with the plaintiff, and did not require the parties
 9 to serve by fax, and noted that the ECF system would be in place in one month and
 10 that we would receive immediate notice. Had Plaintiff kindly consented to fax, it
 11 would of course received notice. Now we have another excuse of "deleting an
 12 email" and thereafter not attempting to retrieve it after it was deleted.

15 Dated: 6 March 2006

BIRNBERG & ASSOCIATES

17 By: s/Cory Birnberg
 18 Cory A. Birnberg

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